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California Department of Corrections, et al.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**PATRICK M. McCOLLUM, et al.**

**Plaintiffs,**

**v.**

**CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.**

**Defendants.**

**Case No.: C04-3339 CRB (EDL)**

**STIPULATION AND [PROPOSED]  
ORDER REGARDING THE  
DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION'S SEARCHES  
FOR IAB-PURGED DOCUMENTS**

Courtroom: 8, 19<sup>th</sup> Floor  
Judge: The Honorable Charles  
R. Breyer  
Action Filed: August 16, 2004

On or about June 25, 2007, the Honorable Elizabeth D. Laporte issued a Stipulated Order On Plaintiffs' Motion to Compel Responses to Exhaustion Discovery And For an Order to Preserve Relevant Documents (Document 216) (hereafter "June 25, 2007 Order"). In relevant part, the June 25, 2007 Order addressed inmate appeals files purged by the California Department of Corrections & Rehabilitation's Inmate Appeals Branch ("IAB") in 2003, 2004,

1 2005 and 2006. (June 25, 2007 Order at ¶¶ 2, 3.) The June 25, 2007 Order provided that  
2 “Defendants shall search the IAB’s electronic records of exhausted appeals to identify  
3 potentially relevant Form 602 records that were purged” by IAB in 2004, 2005 and 2006. (June  
4 25, 2007 Order at ¶ 2.) Pursuant to the June 25, 2007 Order, Plaintiffs were to provide a list of  
5 “a reasonable number of search terms to be used to run the searches” to be performed by IAB.  
6 (*Ibid.*) After completing the searches, Defendants were to produce to Plaintiffs “copies of the  
7 Director’s Level Appeal Decision letters which pertain to Wiccan-Pagan inmates or inmates  
8 whose religion cannot be determined from the letter.” (*Ibid.*) Further, the parties were to meet  
9 and confer to reach a stipulation on whether Defendants would also have to perform searches of  
10 IAB’s electronic records relating to inmate appeals files purged by IAB in 2003. (*Id.* at ¶ 3.)

11 On or about July 24, 2007, Judge Laporte issued a subsequent “Order Re: Discovery  
12 Dispute” that addressed the foregoing searches by IAB (Document 226). The Order Re:  
13 Discovery Dispute provided in relevant part that Defendants were obligated to search IAB’s  
14 electronic records of exhausted appeals corresponding to the Form 602 records that were purged  
15 by IAB in 2003. (Order Re: Discovery Dispute at p. 1.) The Order Re: Discovery Dispute also  
16 provided that Plaintiffs were to provide Defendants with a list of 20 search terms, and that  
17 Defendants would use these 20 search terms to search IAB’s electronic records of exhausted  
18 appeals to identify potentially relevant Form 602 records that were purged by IAB in 2003,  
19 2004, 2005 and 2006. (*Id.* at p. 2.) The Order Re: Discovery Dispute also stated that Plaintiffs  
20 could move the Court for relief to designate a limited number of additional terms under certain  
21 conditions. (*Ibid.*)

22 Plaintiffs provided the list of 20 search terms to Defendants, and Defendants have  
23 completed their searches and produced the Director’s Level Appeal Decision letters in  
24 accordance with the June 25, 2007 Order and the Order Re: Discovery Dispute.

25 Plaintiffs have approached Defendant California Department of Corrections &  
26 Rehabilitation (“CDCR”) and asked for CDCR to perform additional searches. Specifically,  
27 Plaintiffs have asked CDCR to search IAB’s electronic records of exhausted appeals to identify  
28 further potentially relevant Form 602 records that were purged by IAB in 2003, 2004, 2005 and

1 2006, using seven additional search terms supplied by Plaintiffs: Celtic, Earth, Santeria, Thor,  
2 Clergy, Tarot, and Reverend.

3 Counsel for Plaintiffs and Defendants have met and conferred on Plaintiffs' request for  
4 CDCR to perform these additional searches. The parties agreed that if CDCR voluntarily  
5 performs these additional searches, then Plaintiffs will not seek any further searches pursuant to  
6 the Court's June 25, 2007 Order and Order Re: Discovery Dispute. The parties further agreed  
7 that if CDCR voluntarily performs these additional searches, then those searches will also satisfy  
8 any and all further obligations that CDCR may have to respond to the California Public Records  
9 Act ("CPRA") requests that Plaintiffs have served on CDCR.

10 Now, therefore, Counsel for Plaintiffs and Defendants hereby stipulate as follows:  
11

12 1. CDCR will search IAB's electronic records of exhausted appeals to identify  
13 further potentially relevant Form 602 records that were purged by IAB in 2003, 2004, 2005 and  
14 2006, using the following seven additional search terms: Celtic, Earth, Santeria, Thor, Clergy,  
15 Tarot, and Reverend.

16 2. CDCR shall have until December 17, 2007 to perform these additional searches  
17 and produce to Plaintiffs copies of the resulting Director's Level Appeal Decision letters that  
18 pertain to Wiccan-Pagan inmates or inmates whose religion cannot be determined from the letter.

19 3. Plaintiffs will not seek any further searches pursuant to Plaintiffs' Motion to  
20 Compel Responses to Exhaustion Discovery and For Order to Preserve Relevant Documents, the  
21 Court's June 25, 2007 Order, and/or the Order Re: Discovery Dispute.

22 4. Plaintiffs agree that CDCR performing these additional searches and production  
23 also satisfies and meets any and all further obligations CDCR may have to respond to Plaintiffs'  
24 CPRA requests.

25 5. This Stipulation is without prejudice to Plaintiffs' right to request, in merits  
26 discovery, documents relating to relevant Director's Level Appeal Decision letters.

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6. This Stipulation is without prejudice to Plaintiffs' right to seek evidentiary or other sanctions in this action, as permitted by law.

**IT IS SO STIPULATED.**

Dated: November 7, 2007

EDMUND G. BROWN JR.  
Attorney General of the State of California

By: /s/Joshua C. Irwin

Joshua C. Irwin  
Counsel for Defendants

Dated: November 7, 2007

JONES DAY

By: /s/Elaine Wallace

Elaine Wallace  
Counsel for Plaintiffs

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: November 8, 2007

THE HONORABLE JUDGE ELIZABETH D. LAPORTE  
U.S. Magistrate Judge

